

SENATE BILL No. 353

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-11-6-1.

Synopsis: Recovery of public money. Requires an examiner to file a report promptly disclosing nonfeasance, misfeasance, or malfeasance in the letting or performance of a public contract. Requires the examiner to file the report with the state examiner at the time the matter is discovered, instead of at the conclusion of the audit. Requires the state examiner to file the report promptly with the attorney general.

Effective: July 1, 2009.

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January 8, 2009, read first time and referred to Committee on Judiciary.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 353

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-11-6-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) The state examiner,
3 personally or through the deputy examiners, field examiners, or private
4 examiners, upon the petition of twenty-five (25) interested taxpayers
5 showing that effective local relief has not and cannot be obtained after
6 due effort, shall make the inquiries, tests, examinations, and
7 investigations that may be necessary to determine whether:

8 (1) any public contract has been regularly and lawfully executed
9 and performed; or

10 (2) any public work, building, or structure has been or is being
11 performed, built, or constructed in accordance with the terms and
12 provisions of the contract, and in compliance with the plans and
13 specifications, if any.

14 Upon a written petition of twenty-five (25) taxpayers the state examiner
15 may also require all plans, specifications, and estimates to be submitted
16 to the state examiner for corrections and approval before a contract is
17 awarded.



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(b) The state examiner, deputy examiner, and any field examiner, when engaged in making an inquiry, test, examination, or investigation under subsection (a), is entitled to examine and inspect any public records, documents, data, contracts, plans, and specifications contained or found in any public office or other place pertaining or relating to the public contract or public work, building, or structure. In addition, subpoenas may be issued to witnesses to appear before the examiner in person or to produce books and papers for inspection and examination. The state examiner, deputy, field, and private examiner may administer oaths and examine witnesses under oath either orally or by interrogatories on all matters under examination and investigation. Under order of the state examiner, the examination may be transcribed, with the reasonable expense paid by the municipality in the same manner as the compensation of the field examiner is paid.

(c) The state examiner, the deputy examiner, and a field examiner may enforce attendance and answers to questions and interrogatories, as provided by law, with respect to examinations and investigations made by the state examiner, deputy examiner, field examiner, or private examiner of public offices.

(d) The state examiner, deputy examiner, any field examiner, and any private examiner, when making an examination or investigation under subsection (a), shall examine, inspect, and test the public works, buildings, or structures in the manner that the examiner sees fit to determine whether it is being performed, built, or constructed according to the contract and plans and specifications.

(e) The state examiner shall file a report covering any examination or investigation that discloses:

(1) fraud, collusion, misconduct, or negligence in the letting or the execution of any public contract or in the performance of any of the terms and conditions of any public contract; or

(2) any failure to comply with the terms or conditions of any public contract in the construction of any public work, building, or structure or to perform, build, or construct it according to the plans and specifications, if any, provided in the contract; that causes loss, injury, waste, or damage to the state, the municipality, taxing or assessment district, other public entity, or to its citizens, if it is enforceable by assessment or taxation.

(f) The report must ~~be~~ **meet the following requirements:**

(1) **The report must be** made, signed, and verified in quadruplicate by the examiner making the examination. ~~and~~

(2) **The report must be** filed promptly with the state examiner **at the time the matter is discovered and before the audit is**

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1 **concluded.**

2 After inspection of the report, the state examiner shall file a copy of the
3 report **promptly** with the attorney general.

4 (g) The attorney general shall diligently institute and prosecute civil
5 proceedings against any or all officers, individuals, and persons in the
6 form and manner that the attorney general determines will secure a
7 proper recovery to the state, municipality, taxing or assessment district,
8 or other public entity injured, defrauded, or damaged by the matters in
9 the report. These prosecutions may be made by the attorney general and
10 the recovery may be had, either upon public official bonds, contractors'
11 bonds, surety or other bonds, or upon individual liability, either upon
12 contract or in tort, as the attorney general determines is wise. No action
13 or recovery in any form or manner, or against any party or parties,
14 precludes further or additional action or recovery in any other form or
15 manner or against another party, either concurrently with or later found
16 necessary, to secure complete recovery and restitution with respect to
17 all matters exhibited, set out, or described in the report. The suits may
18 be brought in the name of the state on the relation of the attorney
19 general for the benefit of the state, or the municipality, taxing or
20 assessment district, or other public entity that may be proper. The
21 actions brought against any defendants may be joined, as to parties,
22 form, and causes of action, in the manner that the attorney general
23 decides.

24 (h) Any report described in this section or a copy duly certified by
25 the state examiner shall be taken and received in any and all courts of
26 this state as prima facie evidence of the facts stated and contained in
27 the reports.

28 (i) If an examination, investigation, or test is made without a petition
29 being first filed and the examination, investigation, or test shows that
30 the terms of the contract are being complied with, then the expense of
31 the examination, investigation, or test shall be paid by the state upon
32 vouchers approved by the state examiner from funds available for
33 contractual service of the state board of accounts. If such a report
34 shows misfeasance, malfeasance, or nonfeasance in public office or
35 shows that the terms of the plans and specifications under which a
36 contract has been awarded are not being complied with, it is unlawful
37 to make the report public until the report has been certified to the
38 attorney general.

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